

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE**

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SNMP RESEARCH, INC. and SNMP
RESEARCH INTERNATIONAL, INC.,

Plaintiffs,

v.

BROADCOM INC.; BROCADE
COMMUNICATIONS SYSTEMS LLC; and
EXTREME NETWORKS, INC.,

Defendants.
----- X

Case No. 3:20-cv-00451-CEA-DCP

U.S. District Judge Charles E. Atchley

DECLARATION OF SAURABH PRABHAKAR

I, Saurabh Prabhakar, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney at Debevoise & Plimpton LLP and counsel of record for Defendant Extreme Networks, Inc. (“Extreme”) in the above-captioned action. I have personal knowledge of the facts set forth in this declaration and can and will testify thereto under oath if called to do so.

2. On October 11, 2023, I, along with other counsel for Extreme, participated in a meet and confer with counsel for Plaintiffs SNMP Research Inc. and SNMP Research International, Inc. (collectively, “SNMPR”) about downgrading the confidentiality designation of certain of Extreme’s financial documents from Outside Counsel Eyes Only (“OCEO”) to a lower designation.

3. During the meet and confer, SNMPR stated that it wanted Extreme to “downgrade” the confidentiality designation of these documents so that Dr. Case, the owner of both SNMPR entities, could review these documents.

4. I explained to SNMPR's counsel that the documents in question contain highly sensitive and secret commercial information about Extreme's business. We explained that while SNMPR and Extreme are not direct competitors in the market, the financial documents contain commercial information that could harm Extreme or advantage SNMPR outside of this litigation, especially because Dr. Case is heavily involved with the commercial side of the SNMPR's business. We further reminded counsel for SNMPR that financial information is routinely designated as OCEO in civil litigation and that SNMPR had similarly designated its financial documents under the OCEO designation.

5. We also asked counsel for SNMPR about Dr. Case's particularized need for access to these documents given that SNMR's attorneys and damages experts have access to them under the existing OCEO designation. They did not offer a specific explanation of necessity but instead generally stated that Dr. Case is a very sophisticated client with a lot of technical experience.

6. In preparation for the meet and confer, I had reviewed documents produced by SNMPR in this litigation. I found that SNMPR had produced its financial statements, like income statements, balance sheets, and customer ledger, with OCEO designations in this case. It also is a matter of public record that SNMPR has engaged in business with at least one of Extreme's direct competitors, Avaya, Inc., against whom it commenced litigation in 2012.

7. On October 25, 2023, SNMPR requested the Court's assistance in resolving a dispute "with regard to Extreme' level of confidentiality of documents under the Protective Order."

8. On October 27, the Court gave leave to SNMPR to "file appropriate motions with respect to confidentiality level of thirteen financial documents that are in dispute."

9. After the Court issued this order, SNMPR offered to re-designate its financial statements to downgrade them from OCEO to the less restrictive "Highly Confidential" designation. To date, SNMPR has not re-produced the financial statements it offered to re-designate with a lower confidentiality label.

10. On March 5, 2024, SNMPR produced its updated customer ledger, which contains information about SNMPR's customers and payments they made to SNMPR, with OCEO designation.

SNMPR's Violation of a Non-Disclosure Agreement with Extreme

11. In 2022, during the course of settlement discussions, SNMPR and Extreme had entered into a Mutual Non-Disclosure and FRE 408 Agreement ("Mutual NDA").

12. On December 1, 2023, in response to Extreme's supplemental brief on privilege, SNMPR filed an exhibit containing information that was provided to them pursuant to the Mutual NDA. SNMPR's filing was in violation of the Mutual NDA.

13. After Extreme raised SNMPR's violation of the Mutual NDA, SNMPR filed a motion to withdraw and replace the exhibit. *See* Plaintiffs' Unopposed Motion to Withdraw and Replace Documents Filed Under Seal, ECF No. 343.

SNMPR's Violation of the Protective Order

14. Attached hereto as **Exhibit 1** is a true and correct copy of an excerpt of transcript of the deposition of Daniel DeBacker.

15. On February 14, 2024, SNMPR violated the Protective Order ("PO") in this case when its counsel showed documents produced by former-party Broadcom with Broadcom Bates numbers and OCEO designation to Daniel DeBacker, Extreme's 30(b)(6) witness, who had not previously seen the document and did not otherwise qualify as an individual authorized to

receive Broadcom's OCEO-designated information under the PO. Exhibit 1, at 77:24 – 78:12. During the deposition, Extreme raised that the introduction of the exhibit constituted a violation of the PO and noted that counsel for SNMPR should follow procedures under the Protective Order concerning the violation. *Id.*

16. Under Paragraph 49 of the PO, SNMPR was required to notify Broadcom in writing about the unauthorized disclosure of their protected information. *See* Amended and Restated Protective Order, at ¶ 49 (ECF No. 335).

17. On February 20, 2024, I asked Mr. John Wood, counsel for SNMPR, whether he had contacted counsel for Broadcom about the violation of the PO during Mr. DeBacker's deposition. Mr. Wood stated "No, I have not." To date, I am not aware of any communication from SNMPR to counsel for Broadcom notifying them about the violation, as is required under the PO.

Executed on April 3, 2024 in San Francisco, CA.

/s/ Saurabh Prabhakar
Saurabh Prabhakar